

E545 TZC v Miller

**Joseph J. Perrone, Esq. (JP-6832)**  
**Giuliano McDonnell & Perrone, LLP**  
***Attorneys for Plaintiff Tappan Zee Constructors, LLC***  
**5 Penn Plaza, 23<sup>rd</sup> Floor**  
**New York, New York 10001**  
**Tel: (646) 328-0120**

**UNITED STATE DISTRICT COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

-----X

Civil Action No.:

TAPPAN ZEE CONSTRUCTORS, LLC,

**COMPLAINT**

Plaintiff,

V.

MILLER MARINE, INC. and  
MILLER'S LAUNCH, INC.,

Defendants.

-----X

Plaintiff, TAPPAN ZEE CONSTRUCTORS, LLC, (hereinafter "TZC"), by and through its attorneys, Giuliano McDonnell & Perrone, LLP, as and for its complaint against the defendants alleges up information and belief as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and is asserted under the admiralty and maritime jurisdiction of this Court pursuant to Article III, Section 2 of the Constitution of the United States of America and under 28 U.S.C. § 1333.

2. Venue properly lies with this Court, as legal actions commenced by multiple potential Claimants have been filed in the United States District Court, Southern District of New York, and all of the events for which relief is sought occurred within this district.

E545 TZC v Miller

3. At all times hereinafter mentioned, Plaintiff, TZC, was and currently is a Delaware limited liability company with its principal office and place of business located at 120 White Plains Road, Tarrytown, New York 10591.

4. At all times hereinafter mentioned, Defendant MILLER MARINE, INC. (“Miller Marine”), was and currently is a New York corporation with its principal office and place of business located at Atlantic Highlands Municipal Harbor, 2 Simon Lake Drive, Atlantic Highlands, NJ 07716.

5. At all times hereinafter mentioned, Defendant MILLER’S LAUNCH. INC., (“Miller’s Launch”) was and currently is a New York corporation with its principal office and place of business located at Pier 7.5, Staten Island, New York, 10301.

6. TZC, at all material times was the Design-Builder of the New New York Bridge (formally named the “Governor Mario M Cuomo Memorial Bridge”) located between Tarrytown and Nyack, New York (hereinafter “MMC Bridge”) pursuant to a contract with the New York State Thruway Authority dated November 30, 2012; as part of the contract, TZC was also to remove the then existing Tappan Zee Bridge (officially “Governor Malcolm Wilson Tappan Zee Bridge”) from the Hudson River (hereinafter “MWTZ Bridge”). The building of the MMC Bridge and Removal of the MWTZ Bridge will be referred to as the “TZC Project”.

7. TZC started construction on the MMC Bridge in the Spring of 2013 and completed its construction in the Fall of 2019.

8. TZC started demolition of the MWTZ Bridge in the Fall of 2017 and completed its removal in the Spring of 2020.

E545 TZC v Miller

9. On or about June 1, 2015, TZC and Miller Marine entered into a written contract ("TZC-Miller Contract") for the use of the tugboat Shawn Miller on the TZC Project. That contract was extended pursuant to contract modifications number 1 through 5 through the end of the TZC Project in 2020.

10. At the time Miller Marine entered into the TZC-Miller Contract in June 2015, and at the time of each and every contract modification, including the last modification no. 5 on July 31, 2019, it was the understanding of both TZC and Miller Marine, that Miller Marine was under contract to supply the tugboat Shawn Miller with a fully trained and competent crew, capable of performing all towing tasks assigned to it by TZC during its time on the project, including on October 17, 2019.

11. At the time Miller Marine entered into the TZC-Miller Contract in June 2015, and at the time of each and every contract modification, including modification no. 5 on July 31, 2019, Miller Marine was not the owner, operator, crewing agent or charterer of the tugboat Shawn Miller.

12. At the time Miller Marine entered into the TZC-Miller Contract in June 2015, and at the time of each and every contract modification, including modification no. 4 on July 31, 2018, Miller's Launch, not Miller's Marine, was the owner and operator of the tugboat Shawn Miller, and also was the employer of its crew consisting of a licensed captain and deckhand.

13. On or about January 31, 2019, Miller's Launch transferred its ownership interest in the tugboat Shawn Miller to non-party Miller's Tug & Barge, Inc.

E545 TZC v Miller

14. Although Miller's Launch transferred its interest in the tug Shawn Miller to Miller's Tug and Barge, Inc, it did not also cede its role and responsibility for training and supplying the tug's crew, consisting of captains and deckhands, to the tug Shawn Miller.

15. At no time from June 1, 2015 to January 2, 2020 (the last day the tug Shawn Miller worked on the TZC Project), did Miller Marine, own, operate, charter, crew, or otherwise act as owner *pro hac vice* of the tug Shawn Miller.

16. The work TZC hired the tug Shawn Miller to perform from 2015 through 2020 was the towing, moving, shifting and assisting TZC floating equipment, consisting primarily of all types of barges (crane, deck, dive, hopper, material and work platform designs) that were anchored, docked, moored, spudded or tied to another barge, with the tug Shawn Miller's crew providing the labor to accomplish the task, including tying and untying lines, lifting and lowering spuds and locating or relocating navigation lights.

17. On or about September 6, 2017 TZC and Ballard entered into a contract for Ballard to provide the labor, supervision, materials and equipment (except the floating operations platform (Dive Barge) and tug to move that platform) to perform underwater diver work for the removal of the MWTZ Bridge underwater structures. Ballard's work continued on the project from the Fall of 2017 through the Winter of 2020.

18. On or about October 17, 2019, the tug Shawn Miller, owned by Miller's Tug and Barge, Inc., and being operated by a crew consisting of Captain Carl Hoerning and Deckhand John McLoughlin, both employed by Miller's Launch, were tasked by TZC to use the tug Shawn Miller to reposition the TZC owned and non-party Ballard Marine Construction, LLC ("Ballard") managed and operated "Dive Barge" ("TZC FF#14"), which

E545 TZC v Miller

was a 30' wide by 100' long Flexi-Float sectional barge outfitted by Ballard for commercial diving operations.

19. On or about October 17, 2019, the Dive Barge had four Ballard personnel aboard to conduct the dive operations it was under contract with TZC to do as part of the MWTZ Bridge demolition. On October 17, 2019, there were no TZC employees on the Dive Barge before the tug Shawn Miller arrived to move the barge.

20. After the tug Shawn Miller arrived at the Dive Barge, deckhand John McLoughlin got off the tug Shawn Miller to tie the Shawn Miller to the aft end of the Dive barge and assist Ballard employees with the lifting of the two spuds that secured the Dive Barge to the river bottom so that the Dive Barge could be moved by the tug Shawn Miller to another location for Ballard to continue its work on the TZC Project.

21. During the course of lifting the aft spud on the Dive Barge, the spud's lifting wire failed, and the spud fell back down through the spud well. When the spud fell, deckhand John McLoughlin (employed by Miller's Launch) was injured.

22. At the time the spud fell the winch was being operated by a Ballard employee and Miller's Launch employee John McLoughlin was directing the spud's lifting from an unsafe distance away.

23. The lifting and lowering of the barge spuds are considered a dangerous operation and workers involved in this task must be properly trained in both the operation of the equipment and for their own safety and for the safety of others at the location. All properly trained personnel involved in spud operations know they are required to position themselves either at a safe distance from the spud or separated from the spud by a physical protective barrier.

E545 TZC v Miller

23. Deckhand John McLoughlin was injured during the moving of the Dive Barge because he positioned himself far too close to the spud (less than 10 feet) when there was no physical barrier separating him and the spud while the spud was in motion during the lifting of the spud by the hydraulic winch. Had John McLoughlin been the recommended minimum of 20 feet away from the spud while it was being lifted, he would not have been injured.

24. Tug Shawn Miller's deckhand, John McLoughlin, was injured because he was poorly and/or improperly trained by his employer, defendant Miller's Launch, which is also a breach by Millers Marine of its contract with TZC to provide the Tug Shawn Miller with a fully trained and competent crew.

25. Miller's Launch's negligence in the training of John McLoughlin and supplying him to the Tug Shawn Miller to act as its deckhand on the TZC Project were the direct and sole proximate causes of John McLoughlin being injured on October 17, 2019 on the Dive Barge,

26. As a result of defendant Miller Marine's breach of its contract with TZC, it is liable to TZC for all claims and damages asserted by deckhand John McLoughlin in the related case: *In re TZC Constructors LLC as Owner of the Barge FF#14*, SDNY Docket No. 20-2657(ALC)(BCM), plus attorneys' fees and litigations costs.

27. As a result of defendant Miller's Launch's negligence in supplying deckhand John McLoughlin, who was poorly and/or improperly trained for his duties on the Tug Shawn Miller for the work it was contracted to do on the TZC Project, it is liable to TZC for all claims and damages asserted by deckhand John McLoughlin in the related case:

E545 TZC v Miller

In re TZC Constructors LLC as Owner of the Barge FF#14, SDNY Docket No. 20-2657(ALC)(BCM), plus attorneys' fees and litigations costs.

28. As a result of defendant Miller's Launch's negligence in supplying deckhand John McLoughlin, who was poorly and/or improperly trained for his duties on the Tug Shawn Miller for the work said tug was contracted to do on the TZC Project, made the Tug Shawn Miller unseaworthy on October 17, 2019, and as a result, Miller Marine is liable to TZC under its contract with TZC for all claims and damages asserted by deckhand John McLoughlin in the related case: *In re TZC Constructors LLC as Owner of the Barge FF#14*, SDNY Docket No. 20-cv-2657(ALC)(BCM), plus attorneys' fees and litigations costs.

**WHEREFORE**, TZC prays:

- A. That TZC have judgment against defendant Miller Marine for its breach of the TZC-Miller contract, and in an amount not less than any amount non-party John McLoughlin is awarded for his claim against TZC in the limitation of liability proceeding under SDNY Docket No. 20-cv-2657.
- B. That TZC have judgment against defendant Miller Marine for its utilizing Miller's Launch, whose negligence in failing to supply a properly trained crew for the Tug Shawn Miller that would allow Miller Marine to comply with the terms of the TZC-Miller contract, which as result thereof it is in breach, and in an amount not less than any amount non-party John McLoughlin is awarded for his claim against TZC in the limitation of liability proceeding under SDNY Docket No. 20-cv-2657.

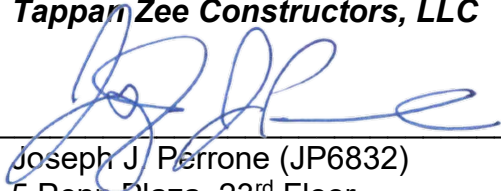
E545 TZC v Miller

- C. That TZC have judgment against defendant Miller's Launch for its negligence in improperly and/or insufficiently training and supplying both John McLoughlin and Carl Hoerning as crew for the Tug Shawn Miller, which negligence was the direct and proximate cause of John McLoughlin being injured as aforesaid, and in an amount not less than any amount non-party John McLoughlin is awarded for his claim against TZC in the limitation of liability proceeding under SDNY Docket No. 20-cv-2657.
- D. That judgment as claimed herein against Miller Marine and Miller's Launch be entered against them jointly and severally.
- E. That TZC may have such other, further and different relief which as to this Honorable Court in furtherance of the pursuits of justice shall necessarily have to be granted to TZC as just, proper, and equitable.

Dated: New York, New York  
October 12, 2022

**Giuliano McDonnell & Perrone, LLP**  
**Attorneys for Plaintiff**  
**Tappan Zee Constructors, LLC**

By: \_\_\_\_\_

  
Joseph J. Perrone (JP6832)  
5 Penn Plaza, 23<sup>rd</sup> Floor  
New York, New York 10001  
Tel: (646) 328-0120  
Email: jperrone@gmplawfirm.com